

UGANDA / JUDGMENT

In Re: MM(Achild) (Adoption Cause No.118 of 2018) [2019] UGHCFD 18 (19 June 2019) [2019] UGHCFD 18

COURT

HC: Family Division (Uganda)

BEFORE

Mukwaya, J

CASE / FILE NUMBER

Adoption Cause No.118 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

ADOPTION CAUSE NO.118 OF 2018

IN THE MATTER OF MUTAGUBYA MARYANNE NAMPIJJA (A CHILD)

AND

IN THE MATTER OF AN ADOPTION PETITION BY CHRISTINE MUTAGUBYA AND MUTYAGUBYA
HENRIE DEO

BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

The Petitioners

The 1st petitioner, Christine Mutagubya (42) is a Canadian citizen holding passport number No. HL 704173 while the 2nd petitioner Mutagubya Henrie Deo (34) who is also the biological father of the child is also Canadian citizen of Ugandan descent holding passport No. HD748684.

According to the attached marriage certificate, the petitioners were married on the 22nd of December 2009 before the Registrar of Marriages at the Uganda Registration Services Bureau. A copy was attached and marked 'B'. The petitioners have three biological children to wit; Isabella Mutagubya (7) and twins Jesse Christopher Mutagubya and Tabitha Catherine Mutagubya who are both 1 year old. Copies of their birth certificates were attached to the 1st petitioner's affidavit

and marked 'C', 'D' and 'E' respectively. The petitioners reside at 404 River Heights Green Cochrane, AB T4C 0R9, Canada.

Mrs. Mutagubya is currently employed as an assistant branch manager with ATB Financial and the 2nd petitioner is currently employed by Brentwood Care Centre and Bethany Care Society as a part time licensed practical nurse. Proof of employment was attached to both their affidavits and marked 'H', 'T' and 'U' respectively.

This petition is seeking the adoption of the child, Mutagubya Maryanne Nampijja, a female child aged 10 years old. It is supported by the affidavits of the petitioners including their income statements, medical reports of the petitioners and their biological children, criminal clearance letters from Interpol and their academic documents; marked 'F', 'G', 'J', 'K', 'M', 'N', 'R', 'S' and 'W'.

The child's biological mother, Nassolo Teddy and her paternal aunt Nampijja Teddy, both gave their unequivocal consent to the adoption by way of affidavit.

The Child

Mutagubya Maryanne Nampijja was born on 17th July 2008 at Katabi. Her biological mother Nassolo Teddy is a Ugandan Citizen and her biological father is the 2nd petitioner, Mutagubya Henrie Deo, a Canadian Citizen of Ugandan descent. A copy of her birth certificate was attached to the affidavit of the 1st petitioner and marked 'I'.

The Probation and Social Welfare Officer of Mityana District, Ms. Nazzimbe Rosemary and of Lubaga Division, Ms. Immaculate Nabawanuka both prepared reports in this case dated 14th February 2019 and 29th April 2019 respectively. The child lived in both places at different times. The officers both swore affidavits which were attached to the petition. This evidence was augmented by their testimonies before court. Both reports gave a detailed background of the child and the circumstances leading to this petition.

The child was born while Mr. Mutagubya and Ms. Nassolo Teddy were still students at Makerere University. The baby remained in her mother's care for two months and she was then handed over to her paternal aunt, Ms. Nampijja Teddy a resident of Butebi zone, Nakibinga ward, Central Division, Mityana Municipal Council, Mityana District. This was because the mother had to go back to University to complete her studies.

Upon completion of their studies, Mr. Mutagubya and Ms. Nassolo ended their relationship. Ms. Nassolo is currently married to Charles Kakooza with whom they have three children and Mr. Mutagubya is married to the 1st Petitioner.

When she was 4 years old, the child's mother, Ms. Nassolo enrolled her at Nile Day Care & Kindergarten in Busabala. In 2015, when she was in Primary 1, her father, with her mother's consent enrolled her in Entebbe Junior School in the boarding section.

Both probation officers concluded their reports by recommending adoption of the child by the petitioners. It was their opinion that adoption is the best alternative care option to promote the general well being of the child.

This Court had the opportunity of interacting with the child who identified the 1st petitioner as her mother and the 2nd petitioner as her father. She testified that when her father is around, the 1st petitioner takes care of her and during her absence, a one Mummy Moreen looks after her. Ms. Koshaba Moreen is the biological mother to another of Mr. Mutagubya's daughters.

The child further testified that she first met her father, the 2nd petitioner in 2015 and her biological mother in 2018 on her birthday. Maryanne also stated that she only speaks to her father, the 2nd petitioner on the phone via video calls.

The Petition

The petitioners have petitioned this court for the adoption of the child. The 2nd petitioner is the biological father of the child and is married to the 1st petitioner. According to their affidavits in support of the petition, both petitioners stated that they have been responsible for the child's basic needs including medical care, clothing, school fees and scholastic materials which they provided through her paternal aunt with whom the child currently lives in Mityana. It was also their assertion that the child has bonded with the 1st petitioner and her siblings and relates well with them.

The purpose of the adoption is to enable the child to live with them as a family where they can adequately provide for her.

It was the duty of this Court under S.48 of the Children Act as amended to determine whether the petitioners were entitled to an order of adoption over the children as prayed in their petition. This court in so doing had to answer two questions:

1. **Whether the petitioners are qualified to be appointed the adoptive parents of Mutagubya Maryanne Nampijja?**
2. **Whether the petition was in the best interest of Mutagubya Maryanne Nampijja?**

Issue 1

1. **Whether the petitioners are qualified to be appointed the adoptive parents of Mutagubya Maryanne Nampijja?**

S. 45(1) (a) of the Children Act provides that an adoption order may be granted to a sole applicant or jointly to spouses where the applicant or at least one of the applicants has attained 25 years of age and is at least 21 years older than the child.

S.46 of the Children Act as amended, provides that a person who is not a citizen of Uganda may, in exceptional circumstances, adopt a Ugandan child if he/she has stayed in Uganda for at least one year and has fostered the child for at least one year under the supervision of a probation and

social welfare officer; does not have a criminal record; has a recommendation regarding his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority and has satisfied the court that his/ her country of origin will respect and recognise the adoption order.

Christine and Henrie Mutagubya are aged 42 and 34 years old making them 32 and 24 years older than the child Mutagubya Maryanne Nampijja.

In September 2018, a Home Study Report, marked 'O', was completed by Ms. Sheila Thomson, Social Worker and reviewed by Elizabeth Gifford, Program Director of Adoption Options. The report was to ascertain the suitability of the 1st petitioner for inter country adoption. It included background and records checks, review of documents and family circumstances, character references, and other aspects of the investigation required to prepare the home study. They found that the 1st petitioner was a suitable person to adopt the child.

Ms Nazzimbe Rosemary, the Probation and Social Welfare Officer of Mityana District, testified in court to clarify on her report recommending that the petitioners adopt the child. The report detailed the current living circumstances of the child with her paternal aunt in Mityana, the child's background and the economic status of the paternal aunt. The officer was of the opinion that the child is vulnerable since she is not living with both her parents and her paternal aunt cannot provide for her basic needs since she has grown old and is a widow.

The Probation and Social Welfare officer of Lubaga Division, Ms. Immaculate Nabawanuka made an additional report in reference to this matter. She provided details about Ms. Koshaba Moreen in whose care the child was placed during school periods. She concluded her report by recommending that the petitioners adopt the child given that the child and Ms. Koshaba are not blood relatives.

The child's biological mother Ms. Nassolo Teddy gave her unequivocal consent to this adoption petition. She further made a sworn testimony during the hearing where she confirmed her support for this petition given that the petitioners love the child, treat her well and because the child will be living with her biological father, the 2nd petitioner.

Ms. Anne Scully, the Senior Manager of Delegated Central Authority on Inter country Adoption, Adoption Services, Children Services, Alberta Canada in a letter to the 1st petitioner marked 'P' dated 12th September, 2018 confirmed that the petitioners' country shall respect the adoption order granted in Uganda if it creates a permanent parent- child relationship.

The petitioners attached proof of their criminal clearance by the Royal Canadian Mounted Police and Interpol Ottawa to confirm that they had no criminal record. These letters were attached to their affidavits and marked 'N'. They also attached general physical exam reports, for prospective adoptive parents and medical reports for their three biological children which showed that they were all in good health. These were marked 'L', 'M' and 'V'.

The 1st petitioner has not resided in Uganda for one year and has neither fostered the child for at least one year under the supervision of the Probation and Social Welfare Officer prior to filing the petition. However the 2nd petitioner is the child's biological father who is currently married to the 1st petitioner. According to the evidence on file, the petitioners have jointly been providing for the child with basic need and maintenance. The 1st petitioner had bonded with the child through her frequent visits to Uganda to see the 2nd petitioner's parents in addition to the constant communication between the child and both petitioner via video calls.

Furthermore, the Probation and social welfare officer of Lubaga Division, Ms. Immaculate Nabawanuka during her testimony stated that since the biological father is one of the parties, there was no need for a care order for fostering given that the petitioners were not strangers to the child.

This Court observed the interaction between the petitioners, the child and their three biological children and it was clear that they had already bonded. This court is of the opinion that the marriage between the biological father, the 2nd petitioner and the 1st petitioner provides an exception for waiver of the formal fostering process for the 1st petitioner. This is because it is a joint petition and the child has had the opportunity to naturally bond with her adoptive family during their visits to Uganda and through the frequent phone calls.

The petitioners, Christine Mutagubya and Mutagubya Henrie Deo, in the opinion of this court, have provided sufficient evidence of their suitability as adoptive parents.

Issue 2

Whether the petition was in the best interest of Mutagubya Nampijja Maryanne?

The Children Act provides for the welfare principle which courts are enjoined to consider in making decisions regarding children.

S.3(1) provides that 'the welfare of the child shall be of paramount consideration whenever the states, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration*.'

S.3(3) provides that 'in determining any question under subsection (1), court or any other person shall have regard to:*

1. *the ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding*
2. *the child's physical, emotional and educational needs;*
3. *the likely effects of any change in the child's circumstances;*
4. *the child's sex, age, background and any other circumstances relevant in the matter;*
5. *any harm that the child has suffered or is at risk of suffering; and*

6. *where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child*

In the instant petition, the 2nd petitioner is the biological father of the child and is married to the 1st petitioner. Both petitioners have been providing for the maintenance and basic needs of the child through her caretakers. They have both used every opportunity during their frequent visits and phone calls to bond with her as much as possible.

This court interviewed the child and she identified the 1st petitioner as her mother. She is happy and thriving under the care of the petitioners. The child has never lived with her biological mother. Her mother gave her unequivocal consent to the adoption in her affidavit and in her testimony before the court.

Counsel for the petitioners implored this court to grant this petition, submitting that the petitioners had fulfilled the necessary requirements under the law to be appointed adoptive parents to the child.

This court is satisfied that the granting of this petition is in the best interests of the child, Mutagubya Nampijja Maryanne.

I hereby make the following orders:

1. An order of Adoption of the child Mutagubya Nampijja Maryanne by the petitioners, Christine Mutagubya and Mutagubya Henrie Deo is allowed.
2. The Registrar General of births and deaths shall make an entry recording this adoption in the Adopted Children Register.
3. The Adoption Order shall be furnished to the Consular Department in the Ministry of Foreign Affairs.
4. Costs of the Petition to be provided for by the petitioners.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 19th day of June 2019

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